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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

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16 KLAMATH RIVERKEEPER, a project of
17 the Klamath Forest Alliance, a non-profit
public benefit corporation organized under
the laws of the State of California,

18 Plaintiff,

19 v.

20 UNITED STATES ENVIRONMENTAL
21 PROTECTION AGENCY, STEPHEN L.
JOHNSON, as Administrator of the United
22 States Environmental Protection Agency,
WAYNE NASTRI, as Regional
23 Administrator of the United States
Environmental Protection Agency, Region 9,

24 Defendants.
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Civil Case No. C 07-3908 WHA

**STIPULATION AND [PROPOSED]
ORDER TO CONTINUE STATUS
CONFERENCE TO AUGUST 7, 2008
TO ALLOW THE PARTIES TIME TO
NEGOTIATE SETTLEMENT OF FEES
AND COSTS AND DISMISSAL OF
THE CASE**

1 WHEREAS Plaintiff Klamath Riverkeeper filed the instant action, challenging the
2 decision of Defendants United States Environmental Protection Agency; Stephen L. Johnson, as
3 Administrator of the United States Environmental Protection Agency; and Wayne Nastri, as
4 Regional Administrator of the United States Environmental Protection Agency, Region IX
5 (collectively, "EPA" or "Agency"), not to disapprove the State of California's decision not to list
6 the Klamath River and its reaches that include the Iron Gate and Copco Dam reservoirs as
7 impaired due to *Microcystis aeruginosa* ("blue green algae") and microcystin toxin in the 2006
8 Clean Water Act Section 303(d) List of Water Quality Limited Segments for California ("2006
9 303(d) List") (DE #1);

10 WHEREAS, on January 22, 2008, the Court entered the parties' proposed Stipulated
11 Order to remand the challenged microcystin toxin listing decision to EPA for reconsideration, to
12 vacate the scheduled summary judgment briefing and hearing dates, and to stay the case ninety
13 (90) days to allow EPA sixty (60) days to reconsider and issue a new decision and to allow thirty
14 (30) days for public comment on that decision (DE #28);

15 WHEREAS, on March 13, 2008, EPA withdrew its prior approval of, and disapproved,
16 the State of California's decision not to include the "Klamath River HU, Middle HA, Oregon to
17 Iron Gate" segment of the Klamath River, which includes the Copco and Iron Gate Dam
18 reservoirs, on the State's 2006 303(d) List as impaired due to elevated concentrations of
19 microcystin toxin, and specifically identified for inclusion on the State's 2006 303(d) List
20 "microcystin toxins" as an additional cause of impairment for the "Klamath River HU, Middle
21 HA, Oregon to Iron Gate" segment (see Exhibit 1);

22 WHEREAS, on March 27, 2008, EPA published in the Federal Register a Notice of
23 Availability and Opportunity to Comment on the Agency's decision, the public comment period
24 for which closed on April 28, 2008;

25 WHEREAS, on May 29, 2008, EPA determined in light of comments received to revise
26 only the description of the segment of the Klamath River which EPA had identified in its March
27 13, 2008 decision as impaired due to microcystin toxins, and transmitted this listing decision to
28 the State (see Exhibit 2);

1 WHEREAS, on May 8, 2008, Plaintiff and EPA informed the Court during a Case
 2 Management Conference that the parties wished to stay the case until June 12, 2008 to allow EPA
 3 time to complete its public comment review and to allow the parties sufficient time to determine
 4 whether EPA's March 13, 2008 decision warrants settlement of the case;

5 WHEREAS, in light of EPA's March 13, 2008 and May 29, 2008 decisions, the parties
 6 believe it likely that they will be able to reach a settlement agreement that resolves this matter and
 7 obviate the need for any further litigation;

8 WHEREAS, considering the above, and in the interest of judicial economy, the parties
 9 believe a continuance of the June 12, 2008 status conference is warranted to allow the parties
 10 time to continue their good faith efforts to negotiate a settlement of Plaintiff's claims and its
 11 request for reasonable fees and costs incurred in bringing this action;

12 NOW THEREFORE Plaintiff and EPA hereby stipulate and jointly request that the Court
 13 continue the June 12, 2008 status conference until August 7, 2008 to allow the parties time to
 14 negotiate a settlement of this case.

15
 16 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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 19 DATED: _____

 HON. WILLIAM H. ALSUP

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 22 Dated: June 2, 2008

 /s/ Drevet Hunt
 CHRISTOPHER SPROUL
 DREVET HUNT
Counsel for Plaintiff Klamath Riverkeeper

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 RONALD J. TENPAS
 Assistant Attorney General
 Environment & Natural Resources Division

27 Dated: June 2, 2008

 /s/ Rochelle L. Russell
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CERTIFICATE OF SERVICE

I certify that on June 2, 2008, a true and correct copy of the foregoing “**STIPULATION AND [PROPOSED] ORDER TO CONTINUE STATUS CONFERENCE TO AUGUST 7, 2008 TO ALLOW THE PARTIES TIME TO NEGOTIATE SETTLEMENT OF FEES AND COSTS AND DISMISSAL OF THE CASE**” was served electronically via the Court’s e-filing system to Counsel of Record in Klamath Riverkeeper v. EPA, Case No. C 07-3908 WHA.

/s/ Rochelle L. Russell

ROCHELLE L. RUSSELL